

Evidence

RULE 128

1. What is Evidence?

Evidence is the means sanctioned by these Rules of ascertaining in a judicial proceeding the truth respecting a matter of fact.

2. Section 1 defines Evidence is the “means” does this mean the procedural aspect or only those objects that may be submitted in court?

It means both the procedural aspect and those that may be submitted in court for judicial administration. The case of *Bustos v. Lucero* defines evidence and the SC in this case defines it as more of a procedural law, but to my mind, the SC erred in deleting the word RULES in equating the same.

3. The second important aspect in the definition of evidence is “sanctioned by these rules”; what do you mean by that?

The governing rules in Evidence will be that of the ROC.

4. Third important aspect in the definition is “to know the truth in a judicial proceeding.” What kind of truth?

I think the book of Riano provides to know the legal truth and the actual truth since the findings of the court depends only on the evidences presented before it.

(Sir) Because knowing the actual truth may not be easily achieved because of the complexities and the limitations provided by the ROC

5. What is legal truth?

It is the truth that is based on the evidence presented to the court.

6. Can you consider the “Hello Garci” tape as an evidence?

No. Because only evidence that are not excluded may be presented as evidence; In this case, the Anti-Wire Tapping Law is violated

7. What if the Hit-man of Duterte came to public claiming to be Duterte’s Hit-man and that they are the ones who killed X; can you consider that as a confession which may be used in Evidence against Duterte?

No. Extrajudicial Confession is applicable only against the Confessor (Hit-Man). So this particular statement made by the Hit-man in the media

cannot be considered as evidence because it is excluded by the Law against Confession.

8. In the instance of the daughter of Janet Napoles posting pictures on her FB page where she is lying in a bathtub full of money, may such photo be presented in Evidence as done by the BIR? Is this not a violation of her right to privacy?

Yes, because it was already uploaded thus, it is now a public property.

Note: Anything obtained in violation of my right to privacy and communication is inadmissible in evidence.

9. What if my wife has doubts that I am cheating on her and then one day she went to my office and then she saw in my table pictures of me with my “other girl” and then my wife used such evidence in Court filing for Concubinage or Violation of RA 9262; may the pictures obtained by my wife be used in Evidence against me?

No, because it is a violation of my right to privacy. The same if it was obtained at our home in my bag, there is still a violation of my right to privacy.

But if such was found by her under the TV, due to my fault and inadvertence, it is no longer a violation of my right to privacy since it is already our common residence.

10. What is the constitutional basis of the SC in making the ROC?

Section 5, Article V, 1987 Constitution

11. Who enacted the ROC?

The Supreme Court

12. What is the nature of the Rules of Evidence, can it be waived?

Yes. The ROC is procedural thus, it may be waived.

Basis: Article 6, NCC (must not transgress public policy, public morals, etc.) or when justice so requires, it may not be waived

13. What is the case of *Anama v. CA*?

It provides that “a liberal construction of the procedural rules is proper where the lapse in literal observance of a rule of procedure has not

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prejudiced the adverse party and has not deprived the court of its authority”

The petitioner cannot rely on technicalities to transgress the law.

14. What is the difference between Evidence and Proof?

- a. **Proof** – is the effect of Evidence
- b. **Evidence** – is the medium of Proof

Note: With respect to the proving of the fact in issue, the Proof is material and not the Evidence

15. In our adversarial type of litigation, there are 2 systems/steps in the orderly presentation of Evidence, these are:

- a. The presentation of Evidence
- b. Be sure that the Evidence is not excluded by the ROC, Constitution, or the CC of the Philippines

16. What is the scope of the Rules of Evidence?

The rules of evidence shall be the same in all courts and in all trials and hearings... (Section 2)

17. Are the Rules in Evidence similar in Criminal and Civil Cases?

No.

18. What are the Rules in Summary Proceeding?

The amount is below 100k; there is no longer a presentation of Evidence in Civil Cases, only a position paper. In Civil Cases, these are the Unjust Vexation, Slight Physical Injuries that can be filed with an Affidavit.

19. Are the Rules of Evidence applicable in cases covered by the Rules of Summary Proceeding?

Yes, Section 2 of the ROE prescribes the Rules on Uniformity.

20. If the ROE is applicable in all courts and those of the Rules on Summary Procedure, why is it that the ROE is applicable only in the MTC in those cases covered by the Rules on Summary Procedure?

Because, Section 2 only prescribes that it shall be the same in all courts, trials and hearings BUT it did not say that it shall be the same in all cases.

21. To where does the ROE do not apply? (Rule 1, Sec. 4)

- a. Election Cases
- b. Land Registration

- c. Cadastral
- d. Naturalization
- e. Insolvency Proceedings
XPN: by analogy or in supplementary character and whenever practicable and convenient

22. What do you mean by “by analogy?” Is there a difference between “by analogy” and “supplementary character?”

By **analogy** means that the ROC will be applied only if there is insufficiency in the applicable law, provided that there is substantial similarity obtaining in both cases.

Supplementary means that there is insufficiency in the applicable law.

23. What is the case of *GSIS vs. Villaviza*? What did the Court apply supplementary?

Supplementary means supplying deficiencies; ROC only applies when there is insufficiency in the applicable rule.

24. What are the kinds of evidence according to form?

- a. Object (Real) Evidence
- b. Documentary Evidence
- c. Testimonial Evidence

25. What is Section 3? What are the Rules on the Admissibility of Evidence? (Favorite Bar Question)

Evidence is admissible when (1) it is relevant to the issue and (2) is not excluded by the law or these Rules.

26. What are the **components** before Evidence may be considered as admissible?

- a. It is relevant to the issue (Relevancy)
- b. Not excluded by the Law or the ROC (Competency)

27. 2 **Elements** for the Admissibility of Evidence?

- a. Relevant
- b. Competent

28. What do you mean by **Relevancy**?

There must be the tendency to establish the probability or improbability of the existence of the Fact in Issue.

29. What do you mean by **Competency**?

When it is not excluded by the law or these Rules

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30. Examples of the **Exclusionary Rules** on Evidence (can't be presented in Evidence)
- Law against Wire-Tapping
 - Bank Secrecy Law
 - Unreasonable Search and Seizure (Art. 3, Sec. 2)
 - Privacy in Communication and Correspondence (Art. 3, Sec. 3)
 - Confession in Violation of the Miranda Rights (Art. 3, Sec. 12)
 - Right against Self-Incrimination (Art. 3, Sec. 17)
31. **Admissibility vs. Probative Weight of Evidence** (addressed to the Judicial Senses of the Court)
- Admissibility** – Where a particular evidence will be considered by the court
 - Probative Weight** – Whether a particular evidence proves an issue
32. **Admissibility vs. Credibility of Evidence** (addressed to Relevancy and Competency)
- Admissibility** – Where a particular evidence will be considered by the court
 - Credibility of Evidence** – Whether the evidence is worthy of belief
33. If Evidence is admissible, does it automatically follow that it has probative weight?
- No, because the issue of Probative Weight is dependent upon Judicial Evaluation.
34. What is the importance of these Exclusionary Rules?
- These Exclusionary Rules refers to the 2nd element in the admissibility of Evidence; they refer to the rules on Competency.
35. A Policeman instigated X, he asked to buy 100 grams of *shabu*, when X was giving the Police the *shabu*, he was immediately handcuffed. During the trial, the Police was presented as witness and he is identifying the 100 grams of *shabu* during the trial. May the *shabu* be considered evidence? If yes, Why? If no, why not?
- No, because instigation is not allowed by the law; the evidence is inadmissible because it is incompetent having violated an exclusionary rule.
36. (Continuation of the above problem) X was already arrested and brought in the Police Station. While being investigated, X admitted that he sells *shabu*. He told the police of the hiding place of the other *shabu* and so the police went to X's house to get

the 400 grams of *shabu*. So in the police station, 2 things happened: (1) a written confession made by X admitting that he sell *shabu* and (2) that he admitted to the existence of the 400 grams of *shabu*.

Trial came, the police is now presenting the confession and the 400 grams of *shabu*; is it admissible?

No, because such confession was not made in the presence of a lawyer; it is not evidence. As for the 400 grams of *shabu*, it is still inadmissible; it is not a waiver of his right. Any waiver during the custodial investigation must be made in the presence of a counsel; otherwise any evidence obtained in violation of this rule is inadmissible because it is incompetent having been covered by the Exclusionary Rules.

37. I have a client having a pot session at 10:00 pm with 2 of his friends; then a police passed by and saw them sniffing *shabu*. The police first went to the precinct and then came back. Two of them saw the police coming and they were able to escape. My client was brought to the precinct, he was searched and no *shabu* was found, he is not also selling *shabu*. A case was filed against my client for the use of *shabu*. The police's evidence was that he saw them. That is self-serving and it is not enough to convict. The police did then get a urine sample the day after his arrest, there was a sufficient lapse of time. The police are now using the urine sample as evidence to which I am objecting vehemently, since the urine sample inadmissible since it was obtained during custodial investigation and made not in the presence of a counsel. If you are the judge, are you going to acquit my client?

Yes. There must be a showing that such signing of waiver is done in the presence of a counsel.

38. What is "multiple admissibility of evidence?"

Evidence is relevant and competent for 2 or more purposes.

39. What is "conditional admissibility of evidence?"

Where the evidence is irrelevant and incompetent but the court still accepts such evidence on the condition that added facts will be submitted later on.

Note: Only a party to the signing of a document or the one taking a photograph is considered as competent to identify such documents.

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40. What is "curative admissibility of evidence?"

When the other party was allowed to present an objectionable evidence, you can also be allowed to present another objectionable evidence.

41. Factum Probandum vs. Factum Probans

- a. **Factum Probandum** – ultimate facts; the facts to be established; hypothetical – what one party affirms and the other denies
- b. **Factum Probans** – evidentiary facts; the fact by which the factum probandum is established

42. Marcelino was a previous PDEA agent, while in the course of surveillance he was arrested since accordingly he is no longer an agent and it is improbable that he is now a part of the syndicate that he claims he is surveying. The police are asking where his mission order was, but he can't present anything, only stating that what he was doing was a legitimate operation. A case was filed against him for illegal manufacturing of shabu which is a non-bailable offense, he is now in jail.

In so far as Marcelino is concerned, what is the factum probandum and what is the factum probans in hi defense?

The ultimate fact (probandum) is that "I, Marcelino, am authorized to enter the premises because I am surveying the premises; that his operation is legal.

The evidentiary fact (probans) is the mission order.

If you are the police that arrested Marcelino, what is now the factum probans and the factum probandum?

The factum probans now is that the police should get a certification from the Navy, Marines and PDEA showing that Marcelino is not authorized to conduct the survey.

43. Burden of Proof vs. Burden of Evidence

- a. **Burden of Proof** – *onus probandi*; obligation of the party in a litigation to persuade the court of the fact in issue
- b. **Burden of Evidence** – obligation of the party to go forward with the evidence to over throw the *prima facie* evidence against him

44. Who has the burden of proof?

- a. **Civil Case** –
 - i. plaintiff (to prove his COA)
 - ii. defendant (only in affirmative defense)
- b. **Criminal Case**

- i. prosecution (yes)
- ii. accused (no)
- c. **Admin Case**
 - i. complainant (to prove his COA)
 - ii. respondent (only in affirmative defense)

45. What is the Hierarchy of Evidence?

1. Proof Beyond Reasonable Doubt
2. Clear and Convincing Evidence
3. Preponderance of Evidence
4. Substantial Evidence

46. Burden of Evidence (Martinez vs. CA)

In case of self-defense, you are admitting the killing, thus the burden of proof shifts from the prosecution to the accused.

Note: A fact admitted need not be proved.

47. Section 4: Relevancy; collateral matters

Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. **Evidence** on collateral matters shall not be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue.

48. Are all collateral evidence prohibited?

GR: **Yes**

XPN: It tends in any reasonable degree to establish the probability or improbability of the fact in issue

49. Why are collateral evidences, as a rule, inadmissible?

Because **they are outside the coverage of the fact in issue**

50. Is asking the accused to try on a short violative of his right against self-incrimination?

No, such is a purely a mechanical act. You are violating the constitutional right when there is already the use of the intellect.